

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0750 ST  
SALES AND USE TAX  
FOR TAX PERIOD: 1994 THROUGH 1996**

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**ISSUE**

**I. Sales & Use Tax – ICHIA Credit Availability**

**Authority:** IC 27-8-10-2.1; Form IT-20

Taxpayer protests the Department's denial of the ICHIA credit being applied to sales and use tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana domiciled health maintenance organization. Taxpayer is a member of the Indiana Comprehensive Health Insurance Association (hereafter ICHIA). Taxpayer applied a credit allowed ICHIA members to its use tax liability. The Department denied the credit and taxpayer protested. Additional relevant facts will be provided below, as necessary.

**I. Sales & Use Tax – ICHIA Credit**

**DISCUSSION**

The credit taxpayer applied to its use tax liability was the ICHIA credit, IC 27-8-10-2.1, which provides:

Members ... may either take a credit against premium taxes, gross income taxes, adjusted gross income taxes, supplemental corporate net income taxes, or any combination of these, or similar taxes upon revenues or income of member insurers that may be imposed by the state... IC 27-8-10-2.1(n)(1)

The taxpayer applied this credit to its use tax liability which was reported on the IT-20 income tax return. The auditor stated the use tax was “not based upon revenues nor income and therefore the premium tax credit can not be applied to the use tax reported of the taxpayer.” Audit Report p.5. The taxpayer protested and claimed the credit should be allowed based on two arguments. First, taxpayer argues the Indiana use tax falls within the scope of “similar taxes upon revenue or income of member insurers.” Second, the taxpayer claims the instructions accompanying Form IT-20 allow such a credit against sales and use tax. These issues will be addressed below.

First, taxpayer’s interpretation of the ICHIA credit statute differs from the Department’s. Taxpayer’s argument, which is an interpretation of the statute, is two-fold. Taxpayer argues the statute does not specifically permit or prohibit the offsetting of use tax with the ICHIA credit but uses broad language to include “similar taxes.” Taxpayer’s Protest Brief p.3 citing IC 27-8-10-2.1(n)(1). Taxpayer goes on to state,

... all types of taxes upon revenues or income are already listed in that section of the statute. This indicates that the legislature, when enacting this provision, believed there were other types of taxes that could be included in addition to those specifically listed. The extraneous words indicate a legislative intent to include nearly all types of taxes imposed upon health insurers. Taxpayer’s Protest Brief p.3.

Taxpayer also urges the Department to recognize no analytical difference between an income tax and an excise tax. Taxpayer cites the history of the gross income tax and the gross retail tax and argues a lack of distinction between the two would mean the ICHIA credit should apply to both.

This hearing officer will not presume to guess at the legislature’s intent in passing the ICHIA credit statute. The statute clearly requires the credit be taken against tax on revenue or income, not against excise taxes. The Department will not read the purpose of listing the specific taxes in the section as anything other than illustration or example. Also, the Department fails to agree both income and excise taxes should be analyzed similarly. There are separate statutes and case law for both income and excise taxes, and in this case, the Department finds the statute clearly applies solely to income tax.

Secondly, the taxpayer argues the instructions for the IT-20 form allow the credit. On the IT-20, line 49 (total income tax) and line 50 (sales/use tax due) are added and reported on line 51. The ICHIA credit, along with other credits, are allowed on lines 52 through 54 and reported on line 55. Line 55 is then subtracted from line 51 for the total tax due. Taxpayer argues the structure of the form allows for the ICHIA credit to be taken against a use tax liability. However, the instructions which

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accompany the form clearly state, “The total of all credits are limited to the amount of tax due on line 49 unless otherwise noted.” Again, line 49 is the total *income* tax. The Department finds the form and the accompanying instructions do not allow for the ICHIA credit to be taken against a use tax liability.

### **FINDING**

Taxpayer’s protest is denied.